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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,329	03/25/2004	John E. LaFata	115429-173	8222
29180	7590	09/29/2005	EXAMINER	
BELL, BOYD, & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			LOWEN, ALYSSA	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,329

Applicant(s)

LAFATA ET AL.

Examiner

Alyssa M. Lowen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/7/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 09/07/04 is in compliance with the provisions of 37 CFR 1.97 and 37 CFR 1.98. Accordingly, the examiner is considering the information disclosure statement.

Priority

2. Applicant's claim for domestic priority under 35 U.S.C. 119 (e) is acknowledged. The provisional application (Application No. 60457111) upon which priority is claimed meets the necessary requirements and the non-provisional application was filed within the required one-year time frame.

Specification

3. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

4. The abstract of the disclosure is objected to because it fails to adequately describe the invention. No mention is made about the ability of the toy to produce bubbles or the use of different velocities to move the vapor through the

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bubble forming mechanism to produce different bubble effects. Correction is required. See MPEP § 608.01(b).

Claim Objections

5. Claim 11 is objected to under 37 CFR 1.75(c), the term "fluid" on line 1 should be changed to "vapor".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Aronie (6421502). Aronie discloses a smoke producing toy having a compressible chamber (36) capable of containing a fluid that opens into a tank having a tube (40) with a heating element (38) located therein (Fig. 4). A projection member adjacent the chamber (Fig. 2) is coupled to an activating device in the form of a trigger (88). Aronie also discloses the tank containing the smoke producing liquid (34) can be deformable in order to create the variable pressure that causes the liquid to contact the heating element (column 9 lines 43-47).

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8. Claims 5, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sims (5205771). Regarding claim 5, Sims discloses a reservoir in the form of a fibrous sheath (44) containing heat sensitive oil (column 4 lines 3-5) which has an opening through which is located a heating element (42) that when heated produces smoke. A bubble forming mechanism (22) is covered with a film in order to create a bubble (Fig. 2). Although, the figures show an air bellow to move the vapor through the bubble forming mechanism, it is further disclosed that an automatic air blower, which would include a fan, can replace this feature (column 5 line 44). In regard to claim 8, the fan would be capable of moving the vapor through the opening at various speeds. In regard to claim 9, a reservoir (21) capable of holding a fluid such as air can also be compressed (Fig. 3) and opens into a chamber (24) with a heating element (42) located within. Regarding claim 11, the fan would be capable of moving the vapor through the bubble forming mechanism to produce a bubble with smoke encased within (Fig. 1).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aronie in view of Sims. The smoke producing toy of Aronie discloses the basic inventive concept including a vapor entering a chamber (14) through an

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opening in the chamber (Fig. 3), substantially as claimed, with the exception of the vapor being induced through the toy by fan and the toy having a ring shaped nozzle capable of being covered by film so when the smoke exits the opening a bubble is formed with the vapor. Sims discloses the use of an automatic air blower or fan to move a vapor through a toy (column 5 line 44). A conduit or tube (20) has a ring shaped nozzle with an opening (22) that can have a film extending across it, so that smoke sent through the opening forms a bubble with the smoke enclosed (column 3 paragraphs 1-2). It would have been obvious to one of ordinary skill in the art at the time of invention from the teaching of Sims to replace the smoke emitting mechanism of Aronie with a fan and to add a bubble forming mechanism over the smoke outlet hole in order to decrease the chance of the toy breaking by decreasing the number of moving parts required to emit the smoke and to help retain the attention of a child by adding an additional feature to further amuse the child, respectively.

11. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sims as applied to claim 5 above, and further in view of Thai (6102764). Sims discloses the basic inventive concept including a bubble being formed with air and vapor encased within (column 3 lines 15-16), substantially as claimed, with the exception of a first velocity which creates a stream of bubbles and a second velocity to create one bubble having a larger diameter than those in the stream. Thai, however, discloses a fan (30) that operates at two speeds. One speed is much lower in order to create a large bubble (130) while the second speed is much faster in order to produce a plurality of smaller bubbles (column 6

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paragraph 2) showing this feature to be old in the bubble toy art. It would have been obvious to one of ordinary skill in the art at the time of invention from the teaching of Thai to modify the device of Sims to include multiple fan speeds to create different types of bubbles in order to increase the amusement value of the toy since it will be capable of a variety of effects.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sims in view of Brosseit (2566296). Sims discloses the basic inventive concept, substantially as claimed, with the exception of the reservoir being formed of flexible plastic. Brosseit discloses a reservoir made of rubber or other pliable material, which would include flexible plastic (column 1 line 36-37) showing this feature to be old in the art. It would have been obvious to one of ordinary skill in the art at the time of invention from the teaching of Brosseit to modify the reservoir of Sims to be constructed of flexible plastic so that the reservoir could be easily compressed to expel the fluid.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sims in view of Weeber (2912790). Sims discloses the basic inventive concept, substantially as claimed, with the exception of the vapor appearing any color in the visible spectrum. Weeber discloses the use of colored smoke (column 1 line 39) to be encased in bubbles showing this feature to be old in the art. It would have been obvious to one of ordinary skill in the art at the time of invention from the teaching of Weeber to make the smoke of Sims a variety of colors in order to further amuse and engage the child using the toy.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is (571) 272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Chanda Harris can be reached on 571-272-4448. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AML

Chanda L. Harris
CHANDA L. HARRIS
PRIMARY EXAMINER